

## **ORDINANCE No.**

Amend Transient Lodgings Tax Code related to the administration of short-term rental laws; require short-term rental platforms to either enter into a pass-through registration data-sharing agreement or choose listing locations from a Short-Term Rental Registry created by the City (Ordinance; amend Code Chapter 6.04)

The City of Portland ordains:

Section 1. The Council finds:

1. The City of Portland legalized short-term rentals in 2014. Legalization came with a requirement that short-term rental “hosts” obtain a valid Accessory Short-Term Rental (“ASTR”) permit from the Bureau of Development Services (BDS).
2. Since 2014, BDS and the Revenue Division (“Revenue”) of the Bureau of Revenue and Financial Services have been working with short-term rental platforms (“Platforms”) to increase permitting compliance. These efforts have largely failed, and compliance still stands at under 30%.
3. Following litigation started in October 2015, Revenue reached a settlement agreement with HomeAway in February 2018. The agreement included a provision for HomeAway to share host data directly with the Revenue Division to aid in the enforcement of City regulations. The agreement included a provision that HomeAway would not start sharing data with Revenue until Airbnb agreed to do the same, keeping them at competitive equilibrium.
4. Revenue has been negotiating with Airbnb for over a year, but no agreement has been reached. The most recent Airbnb offer moves backward from prior discussions and tentative verbal agreements, such as putting limitations on what the data can be used for, insisting that it be held confidential, and refusing to remove Platform listings that are not in compliance with the City’s regulations. The delay in getting an agreement from Airbnb has rendered meaningless the agreement Revenue already has with HomeAway, and compliance rates remain very low.
5. A three-judge panel of the United States Court of Appeals for the Ninth Circuit recently upheld a lower court ruling that the City of Santa Monica, California’s ordinance requiring Platforms to only use hosts that are permitted by the City of Santa Monica is legal. The ordinance prohibits Platforms from booking transactions for residential properties unless they are on a registry published by the City of Santa Monica. They also prohibit Platforms from receiving a fee for facilitating bookings on listings that are not on the City of Santa Monica’s registry.
6. This ordinance replicates the City of Santa Monica’s approach.

7. Revenue and the City Attorney's Office have determined that Portland can and should pass a similar ordinance to break the impasse of negotiations and finally obtain a way to ensure all Platforms and hosts are in compliance with the law.
8. Pass-through registration data-sharing agreements can still be beneficial for the City of Portland. Such agreements could be structured to provide the City additional information about listing locations and transactions and ensure that Platforms are partners in enforcing the City Code.
9. A pass-through registration data-sharing agreement also has benefits for Platforms. Examples include the ability to begin listing locations in advance of obtaining permits and obtaining confirmation from the City that listing locations are legal.
10. These Code amendments would give Platforms a choice between either choosing hosts from the City's approved Short-Term Rental Registry or entering into a pass-through registration data-sharing agreement with the Revenue Division with minimum specific information as directed below.

NOW, THEREFORE, The Council directs:

- a. City Code Section 6.04 is amended as set forth in the attached EXHIBIT A.
- b. The Revenue Division of the Bureau of Revenue and Financial Services is authorized to negotiate and execute pass-through registration data-sharing agreements with Platforms. The data shared must include, at a minimum, all the data outlined in the attached EXHIBIT B.

Passed by the Council:

Mayor Ted Wheeler

Prepared by: Thomas W. Lannom

Date Prepared: March 18, 2019

**Mary Hull Caballero**

Auditor of the City of Portland

By

Deputy